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**COUNTY OF LOS ANGELES
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ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

June 30, 2015

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

20 OF JUNE 30, 2015


PATRICK O'GAWA
ACTING EXECUTIVE OFFICER

Dear Supervisors:

**REQUEST FOR APPROVAL OF A CONTRACT WITH
MICROSOFT CORPORATION FOR PREMIER SUPPORT SERVICES
(ALL SUPERVISORIAL DISTRICTS) (3 VOTES)**

SUBJECT

The Chief Information Office is requesting Board approval of a Contract for Premier Support Services with Microsoft Corporation.

IT IS RECOMMENDED THAT THE BOARD:

1. Approve and delegate authority to the Chief Information Officer (CIO) to execute the attached Contract (Agreement) with Microsoft Corporation (Microsoft) for Premier Support Services (PSS). This Agreement will be effective upon approval by your Board for a term of five years. This Agreement also provides two 1 year extensions, for a maximum contract term of seven years.
2. Delegate authority to the Chief Information Officer (CIO), or his designee, pursuant to the terms of the Agreement, to approve and execute Statement of Services (SOS), and SOS Change Notices if necessary, on behalf of County departments for PSS and notifying your Board on any SOS exceeding \$300,000. The total annual amount authorized for expenditure under this Agreement shall not exceed \$3,000,000 each calendar year, including any part thereof, during the term of the Agreement.
3. Delegate authority to the CIO, or his designee, to execute future Amendments to add or change certain terms and conditions in the Agreement as required by your Board or the Chief Executive Officer (CEO), with all actions subject to review by County Counsel.
4. Delegate authority to the CIO, or his designee, to execute Amendments to the Agreement to

extend the term of the Agreement for each of the two 1-year renewal periods provided in the Agreement.

5. Delegate authority to the CIO, or his designee, pursuant to the terms of the Agreement, to amend, delete, and/or replace any Exhibits to the Agreement to: (i) add/delete PSS packages, as necessary; (ii) modify the exhibits to reflect County standards and needs and processes; and (iii) approve additional programmatic and/or administrative workflow changes (e.g., changes to SOS issuance process) needed to effectively manage the Agreement.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Microsoft PSS are highly technical advisory and support services that are developed in conjunction with Microsoft's product groups and contain Microsoft intellectual property that can only be provided by Microsoft. There are no other third-party companies or resellers that have similar access to Microsoft's intellectual property or engineering and product groups. PSS include technical planning and assessments, third-tier product support that provides direct high-end technical engineering resources, and dedicated engineering support to assist in the design and deployment of Microsoft products and technologies.

County departments have been acquiring PSS through the CIO's Microsoft Master Services Agreement (MSA) since 2005. The MSA expired on December 31, 2014 and departments have been purchasing PSS through individually negotiated contracts approved by the County's Purchasing Agent. The 12 departments, including the Executive Office, Board of Supervisors (BOS), CEO, CIO, Department of Health Services, Department of Mental Health, Department of Public Health, Department of Public Social Services, Department of Public Works, Fire Department, Internal Services Department, Registrar-Recorder/County Clerk, and Sheriff Department have needs for PSS in Fiscal Year's (FY's) 2015-16 and beyond.

Approval of this Agreement will streamline the department procurement of PSS using SOSs under a single agreement with a single set of terms and conditions that have been approved as to form by County Counsel and CEO Risk Management.

Implementation of Strategic Plan Goals

The services proposed within the Agreement support the County Strategic Plan Goals One, Operational Effectiveness: by providing the technical and engineering services in support of departmental use of Microsoft products and technologies.

FISCAL IMPACT/FINANCING

The total annual expenditure under the Agreement will not exceed \$3 million per calendar year, or part thereof. The Agreement expressly includes Microsoft's acknowledgement that the County is not required to issue any SOSs under this Agreement. Each SOS will be funded by Board approved department operational budgets. The administrative process of SOS issuance and approval require confirmation that funding is available before a SOS is executed.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The attached Agreement has been approved as to form by County Counsel. Except as detailed below, the Agreement contains the Board's required contract provisions, including those pertaining to

compliance with the County's Child Support Program, consideration of GAIN participants for employment, and Jury Service requirements. This Agreement is not subject to the County's Living Wage Program. Microsoft is providing highly-technical services and resources in support of their products. These specialized services and resources cannot be provided by County personnel. Accordingly, this is not a Proposition A contract, and, it is exempt from the Living Wage provisions of County Code.

CONTRACTING PROCESS

Microsoft is the sole provider for the type of support services sought. PSS can draw from a wide range of internal Microsoft resources, including the actual software developers for the technologies/products which the County utilizes. On May 4, 2015, the CIO notified your Board of our intent to enter into Sole Source negotiations with Microsoft. A Sole Source Justification is also attached.

The following are the major areas within the negotiated Agreement that differ from the County's preferred position:

1. **Limitation of Liability:** The negotiated Agreement limits Microsoft's liability for damages sustained by the County to \$400,000 or two times the cost of the SOS, whichever is greater. It excludes all liability for consequential damages for such things as business interruption and the County's loss of revenues. This limitation of liability does not apply to damages caused by gross negligence or willful misconduct of Microsoft and/or its affiliates, confidentiality, obligations of indemnification throughout the Agreement, and obligations of the parties arising from a breach of the other party's intellectual property rights. In addition, Microsoft is excluding all liability for indirect damages.
2. **Indemnification:** Microsoft limits its indemnification of the County to claims by third party claims for damages to tangible real and personal property, bodily injury, and death for which it is legally liable to the third-party.
3. **Insurance:** Microsoft will satisfy all insurance requirements through a program of self-insurance or commercial insurance and Microsoft limits various of its insurance obligations, including removal of the County's waiver of subrogation clause.
4. **Acceptance:** As PSS involves standard services, the services are deemed accepted upon delivery by Microsoft. However, if a Department prefers to negotiate acceptance terms, the Agreement and each SOS includes a mechanism for negotiated acceptance terms.
5. **Most Favored Public Entity:** The Most Favored Public Entity clause is removed from the proposed Agreement. However, Microsoft did agree that in the event its Public Sector hourly rates decrease, the lower rates will be extended to the County for any SOS issued after such decrease.
6. **Cost of Living Adjustment (COLA):** The Board's COLA standard contract language has been replaced by a provision in the Agreement that provides to annually adjust the PSS fees consistent with Microsoft's published Public Sector Rates for the current FY but not to exceed three percent. The increases shall be applied only to any SOS executed after the applicable anniversary date of the Agreement.
7. **Confidentiality:** The Agreement includes an obligation for the County to maintain confidentiality

of certain Microsoft information. In addition, the requirement for all Microsoft personnel to sign individual confidentiality agreements with the County is limited, as Microsoft will sign a confidentiality agreement on behalf of all its personnel.

8. Consideration of Hiring County Employees Targeted for Layoff or Reemployment List: Microsoft has indicated that it will provide consideration to County employees targeted for layoff or reemployment lists, but will not target reporting of job openings and listings to County employees.

9. Consideration of Hiring Greater Avenues for Independence/General Relief Opportunities for WORK (GAIN/GROW) Participants: Microsoft has indicated that it will consider GAIN/GROW participants, but will not report all job openings to the email address designated by the County.

10. Complaints: This provision is not applicable since the services under the Agreement are limited to advisory, support, and maintenance services provided directly to County departments.

11. Liquidated Damages: This provision is not applicable since the services under the Agreement are limited to advisory, support, and maintenance, which CIO determined involve little risk of non-performance and/or delay necessitating liquidated damages.

12. Prohibition on Open Source Software: The County agrees that it will not knowingly incorporate, modify, combine, and/or distribute Microsoft proprietary computer source code with any other non-Microsoft computer source code.

13. Record Retention and Inspection/Audit Settlement: The County retains its audit rights related to this Contract, but will not receive Microsoft company-wide audit reports that may be conducted by Federal or State auditors or by any auditor or accountant employed by Microsoft to prevent the release of confidential information.

14. Termination for Default: The right to terminate for default is mutual and the County has granted Microsoft a cure period for certain defaults. In addition, the County has decided to waive making Microsoft liable for the County's costs in procuring alternative services in case of termination due to Microsoft's default.

15. Health Insurance Portability and Accountability Act (HIPAA): The County, together with Microsoft, determined that Microsoft will not have and will not need access to any patient medical records/patient information (collectively, PHI) in order to provide PSS. As a result, the County is not executing a Business Associate Agreement with Microsoft. In addition, the County has agreed to not require Microsoft to indemnify the County in case of any liability arising from Microsoft's access to PHI. The County has agreed to a specific limitation of liability for breaches involving PHI. If in the course of providing PSS, Microsoft inadvertently gains access to any PHI and there is unauthorized disclosure of such PHI due to a breach of Microsoft's obligations, Microsoft's responsibility for such breach is limited to direct costs up to a limit of \$1 million per occurrence and \$2 million in the aggregate. Finally, neither party will be responsible for consequential or indirect damages with respect to any breach of its obligations related to PHI.

In light of past practices with Microsoft, including the previous agreement with Microsoft, the provisions as described above represent the best positions that could be reached by the parties involved. This Agreement is submitted to your Board with this office's belief that it represents a minimal risk position for the County.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The proposed Agreement will provide County departments with access to Microsoft's technical engineers, intellectual property, and product groups in direct support of department's use of Microsoft products and technologies. County departments utilize PSS to plan, architect, design, and assist in deployments of Microsoft products and technologies, as well as to assist in resolution of

The Honorable Board of Supervisors

6/30/2015

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unanticipated service disruptions.

CONCLUSION

Your Board's approval of the proposed Agreement will ensure that County departments have access to needed support for Microsoft technologies/products that can only be provided by Microsoft.

Upon your Board's approval, it is requested that the Executive Office, Board of Supervisors please return to my office three executed copies of the Agreement.

Respectfully submitted,

A handwritten signature in black ink that reads "Richard Sanchez". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

RICHARD SANCHEZ

Chief Information Officer

RS:JH:pa

Enclosures

c: Chief Executive Office
County Counsel
Executive Office, Board of Supervisors

Office of the CIO
Sole Source Justification for a Microsoft Premier Support Services (PSS) Master Services Agreement (MSA)

1. What is being requested?

The proposed Master Services Agreement (MSA) with Microsoft for Premier Support Services (PSS) provides highly technical and engineering support services for Microsoft products and technologies that can only be provided by Microsoft Services utilizing Microsoft intellectual capital.

2. Why is the product needed – how will it be used?

The MS PSS Agreement enables County departments to access highly technical engineering resources, which can only be provided by Microsoft Premier Support Services, to assist with planning, architecting and advance technical support for Microsoft products and technologies, such as Microsoft Cloud Services, Office 365 Services, SQL databases, document file/retrieval, network printing, SharePoint, Active Directory Services, and personal computer/server operating systems.

3. Is this “brand” of product the only one that meets the user’s requirements? If yes, what is unique about this product?

Yes, the technical and engineering services included in the PSS MSA can only be provided by Microsoft Services and include use of Microsoft’s intellectual capital.

4. Have other products/vendors been considered? If yes, which products/vendors have been considered and how did they fail to meet the user’s requirement?

No, the technical and engineering services included in the PSS MSA can only be provided by Microsoft Services and include use of Microsoft’s intellectual property.

5. Will purchase of this product avoid other costs, e.g., data conversion, etc. or will it incur additional costs, e.g., training, conversion, etc.?

Not applicable. PSS are highly technical and engineering services that are used by departments to assist in the planning, architecting, deployment and support for Microsoft products and technologies.

6. Is this product proprietary or is it available from various dealers? Have you verified this?

Yes, these PSS MSA services can only be provided by Microsoft Services and include use of Microsoft’s intellectual property.

7. Reasonableness of Price.

The pricing of the services described in the PSS MSA is consistent with the U.S.

General Services Administration Schedule.



CONTRACT

BY AND BETWEEN

COUNTY OF LOS ANGELES

AND

MICROSOFT CORPORATION

FOR

PREMIER SUPPORT SERVICES

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- EXHIBIT H - Jury Service Ordinance
- EXHIBIT I - Safely Surrendered Baby Law
- EXHIBIT J - Contractor Acknowledgement and Confidentiality Agreement

**CONTRACT BETWEEN
COUNTY OF LOS ANGELES
AND
MICROSOFT CORPORATION
FOR
PREMIER SUPPORT SERVICES**

This Contract ("Contract") made and entered into this ____ day of _____, 2015 by and between the County of Los Angeles, hereinafter referred to as "County" and Microsoft Corporation, hereinafter referred to as "Contractor". Microsoft Corporation has its primary location at 1 Microsoft Way, Redmond, WA 98052.

RECITALS

WHEREAS, the County may contract with private businesses for certain technology support services, referred to as the Microsoft Premier Product Support Services for Microsoft Products ("Services") for the purposes of this Contract, when certain requirements are met; and

WHEREAS, the Contractor is a private firm specializing in providing the Services; and

WHEREAS, the Services shall be acquired by County Departments on an individual basis through Statement(s) of Service under the administration and with the approval of County's Chief Information Officer or his or her designee ("CIO"); and

WHEREAS, the CIO shall act as a the central coordinator to administer and track all Services performed under this Contract, and with the cooperation and assistance of County Departments acquiring Services hereunder, shall monitor the performance of such Services;

WHEREAS, the County has determined that it is legal, feasible, and cost-effective to contract for the Services; and

WHEREAS, this Contract is for Services that are technical and highly specialized, are provided on an intermittent basis, cannot be performed by current County employees or by individuals who could be recruited and, accordingly, is authorized under the provisions of California Government Code Section 31000.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for good and valuable consideration, the parties agree to the following:

1.0 APPLICABLE DOCUMENTS

Exhibits A (inclusive) through J are attached to and form a part of this Contract. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, deliverable, goods, service, or other work, or otherwise between the base Contract and the Exhibits, or between Exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the terms and conditions of the Contract and then to the Exhibits according to the following priority.

Standard Exhibits:

- 1.1 EXHIBIT A-1 – Additional Terms and Conditions
- 1.2 EXHIBIT A-2 – Microsoft Premier Product Support Services
Description (SD)
- 1.3. EXHIBIT A-3 – Form of Statement of Services (Form of SOS)
- 1.4. EXHIBIT A-4 – Microsoft Premier Support Customer Facing Report
- 1.5. EXHIBIT A-5 – Form of Acceptance Certificate
- 1.6. EXHIBIT B - Microsoft Public Sector Premier Support
Published
Price List
- 1.7 EXHIBIT C - SOS Issuance Process
- 1.8 EXHIBIT D - Contractor's EEO Certification
- 1.9 EXHIBIT E - County's Administration
- 1.10 EXHIBIT F - Contractor's Administration
- 1.11 EXHIBIT G - Certificate of No Conflict of Interest
- 1.12 EXHIBIT H - Jury Service Ordinance
- 1.13 EXHIBIT I - Safely Surrendered Baby Law
- 1.14 EXHIBIT J - Contractor Acknowledgement and
Confidentiality Agreement

2.0 DEFINITIONS

The headings herein contained are for convenience and reference only and are not intended to define the scope of any provision thereof. The following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used.

- 2.1. **Acceptance:** The County's issuance of a written Acceptance Certificate or the process by which County approves the Services, as more fully described in the applicable SOS.
- 2.2. **Acceptance Certificate:** The notice County shall issue to Contractor indicating that Contractor has resolved the subject problem or issues. A form of the Acceptance Certificate is attached as Exhibit A-5.
- 2.3. **Acceptance Criteria:** The mutually agreed upon standards set forth in each applicable SOS.
- 2.4. **Acceptance Test:** The mutually agreed upon process and procedures by which the parties will determine the Services meet the acceptance criteria. Where no Acceptance Tests are included in a SOS, the Services shall be deemed accepted upon completion and delivery to County, and County's review and issuance of an Acceptance Certificate.
- 2.5. **Confidential Information:** Information marked or otherwise identified in writing by a party as proprietary or confidential or that, under the circumstances surrounding the disclosure would be considered proprietary or confidential by a reasonable person acting in good faith. It includes, but is not limited to, non-public information regarding each party's business processes, products, features, marketing and promotions. Confidential Information does not include information which: (i) the recipient developed independently; (ii) the recipient knew before receiving it from the other party; or (iii) is, or subsequently becomes publicly available, or is received from another source, in both cases other than by a breach of an obligation of confidentiality under this Contract.
- 2.6. **Contract:** This agreement, including all exhibits, as executed between County and Contractor. It sets forth the terms and conditions for the issuance and performance of all tasks, deliverables, services and other work.
- 2.7. **Contractor:** The corporation that has entered into this Contract with the County.

- 2.8. **Contractor Program Director:** The individual designated by the Contractor to administer the Contract operations after the Contract award.
- 2.9. **Contractor Support Practice Manager:** The individual designated by Contractor with responsibility for the day-to-day supervision of Contractor's satisfactory performance of its responsibilities under SOSs issued under this Contract.
- 2.10. **Contractor Services Account Executive:** The individual designated by Contractor with overall responsibility of administration of the Contract.
- 2.11. **County Department:** A department or any other administrative body as defined in Los Angeles County Code Title 2 – "Administration", any named County department as well as related agencies and/or related districts who will acquire the Services pursuant to a Statement of Services. County Department shall also include any governmental entity for which the Board of Supervisors is the governing board.
- 2.12. **County Program Director:** Person designated by County with authority for County on contractual or administrative matters relating to this Contract that cannot be resolved by the County's Project Manager. In the case of this Contract, the County Program Director shall mean the County's Chief Information Officer, or his/her designee.
- 2.13. **County Program Manager:** Person designated by County's Program Director to manage the operations under this Contract.
- 2.14. **County Project Manager:** Person designated by each County Department with responsibility for day-to-day supervision of any and all Services provided by Contractor under each SOS issued by such Department. The County Project Manager shall be designated by each County Department in each SOS.
- 2.15. **Day(s):** Whether used with initial capitalization or not, whether singular or plural, shall mean calendar day(s) unless otherwise specified.
- 2.16. **Decrement:** Debit against prepaid fees.
- 2.17. **Deficiency:** Any of the following: (i) nonconformance with the specifications and functional requirements in an applicable SOS, (ii) defect(s) in Services relating to design, materials or workmanship, (iii) error(s), omission(s), or failure(s) to meet any standards set forth in

any SOS, or (iv) other problem(s) which result in the Services not meeting the Acceptance Criteria established in the applicable SOS.

- 2.18. **Effective Date:** The date of approval of this Contract by County's Board of Supervisors.
- 2.8 **Fiscal Year:** The twelve (12) month period beginning July 1st and ending the following June 30th.
- 2.9 **Services:** The Microsoft Premier Product Support Services as described in Exhibit A-2 (Microsoft Premier Product Support Services Description). Services shall include all associated tasks and deliverables (e.g. reports, fixes, etc.) and the Service Deliverables, as applicable.
- 2.10 **Statement of Service or SOS:** Work order document issued by County to the Contractor under and in accordance with Paragraph 3 (Work) and Exhibits A-1, A-2, A-3 and A-4.

3.0 WORK

- 3.1 Pursuant to the provisions of this Contract, the Contractor shall fully perform, complete and deliver on time, all tasks, deliverables, services and other work as set forth in this Contract as more fully set forth in Exhibit A-2 Microsoft Premier Product Support Services Description and each SOS.
- 3.2 If the Contractor provides any tasks, deliverables, goods, services, or other work, other than as specified in this Contract, the same shall be deemed to be a gratuitous effort on the part of the Contractor, and the Contractor shall have no claim whatsoever against the County.
- 3.3 Services shall be acquired by individual County Departments and through issuance of an SOS that has been approved and executed by County's Program Director and Contractor. Following approval and execution, each SOS shall be issued to Contractor by County's Program Director in accordance with the procedures set forth in Sub-paragraph 3.4.
- 3.4 When a County Department has identified a need for Services, it shall first consult with County Program Manager to decide how best to fulfill that need under this Contract and then complete a draft SOS, which it shall submit to the County Program Manager for review. Contractor shall not be authorized to begin work under an SOS and County shall not be obligated to pay Contractor for any work done under an SOS unless and until County Program Manager has approved the SOS and

it has been issued to and executed by Contractor's Contracts Manager. Contractor shall provide to County a completed Exhibit J ("Contractor Personnel Acknowledgment and Confidentiality Agreement") for itself and each of its Contractor personnel and staff performing work under this Contract. Pursuant to Sub-paragraph 7.5.11, Contractor shall provide the executed Exhibit to the County Program Manager prior to the issuance of any SOS. As Contractor is providing such Acknowledgment on behalf of its personnel, Contractor shall indemnify, defend, and hold harmless the County from any and all liability arising from any unauthorized disclosure of Confidential Statutory Information by any Contractor employee, agent, or subcontractor, whether within the course and scope of employment or otherwise, and with or without cause, and Contractor shall take all reasonable steps to prevent such personnel from continuing to disclose such Confidential Statutory Information.

- 3.5 After an SOS is executed by County Program Manager, changes to the SOS must be made through a Change Notice pursuant to Sub-paragraph 8.1.4.

4.0 TERM OF CONTRACT

- 4.1 The term of this Contract shall be five (5) years commencing after the Effective Date, unless sooner terminated or extended, in whole or in part, as provided in this Contract.
- 4.2 The County shall have the sole option to extend this Contract term for up to two (2) additional one-year periods, for a maximum total Contract term of seven (7) years. Each such extension option may be exercised at the sole discretion of the CIO or his/her designee as authorized by the Board of Supervisors.
- 4.3 The Contractor shall notify the County Program Manager when this Contract is within six (6) months of the expiration of the initial term, and where applicable, any successive term. Upon occurrence of this event, the Contractor shall send written notification to the County Program Manager at the address provided in Exhibit E - County's Administration.
- 4.4 Notwithstanding any other provisions of this Paragraph 4 (Term of Contract), for any SOS issued prior to this Contract's expiration date, with an expiration date subsequent to the Contract's termination date, then the terms and conditions of this Contract shall survive in full force and effect as to such particular SOS up to the SOS expiration date; provided, however, that such extended Contract

expiration date shall apply to such SOS only, shall not extend such date for any other purpose whatsoever, including issuing a new or amended SOS or extending any other SOS; and that such SOS has not been terminated by County in accordance with this Contract.

5.0 CONTRACT SUM

- 5.1 The Maximum Contract Sum shall be the total maximum amount which may be paid by County to Contractor under this Contract each calendar year. The Maximum Contract Sum shall not exceed three million dollars (\$3,000,000) per calendar year for the term of this Contract.
- 5.2 The Contractor shall not be entitled to payment or reimbursement for any tasks or services performed, nor for any incidental or administrative expenses whatsoever incurred in or incidental to performance hereunder, except as specified herein. Assumption or takeover of any of the Contractor's duties, responsibilities, or obligations, or performance of same by any person or entity other than the Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever, shall not occur except with the County's express prior written approval.
- 5.3 The Contractor shall notify the County Program Manager when County has incurred seventy-five percent (75%) of the Maximum Contract Sum each year under this Contract. Upon occurrence of this event, the Contractor shall send written notification to the County Program Manager at the address provided in Exhibit E - County's Administration.
- 5.4 **No Payment for Services Provided Following Expiration/Termination of Contract**

The Contractor shall have no claim against County for payment of any money or reimbursement, of any kind whatsoever, for any service provided by the Contractor after the expiration or other termination of this Contract. Should the Contractor receive any such payment it shall immediately notify County and shall immediately repay all such funds to County. Payment by County for services rendered after expiration/termination of this Contract shall not constitute a waiver of County's right to recover such payment from the Contractor. This provision shall survive the expiration or other termination of this Contract.

5.5 Fees and Rates

HOA.1172524.1
HOA.1158085.1

5.5.1 Fee Schedule

The fees for the Services provided hereunder are set forth on the Microsoft Public Sector Premier Support Published Price List set forth in Exhibit B.

5.5.2 Invoices

In consideration for providing the tasks, deliverables, Services, or other work under a SOS, Contractor shall invoice the County after issuance of each SOS pursuant to Paragraph 3 (Work). Each invoice shall state the cost of the Services the County Department is ordering for the coming year which are specified in such County Department's SOS. Such invoices shall contain at least all information required by this Sub-paragraph 5.5.

5.5.3 Submission of Invoices

In order for Contractor to invoice the County for the County Department's SOS payment, the SOS must have been reviewed and approved by the County Project Manager and County Program Manager and issued to Contractor as is provided in Exhibit A-5 ("SOS Issuance Process"). Contractor shall submit its invoice for approval and payment to the County Project Manager for each SOS along with a copy of the approved SOS. Contractor shall also provide copies of these documents to the County Program Manager. Each invoice shall contain, to the extent not already set forth in the SOS accompanying the invoice, the information required in Sub-paragraph 5.5.4.

5.5.4 Customer Facing Report

For each SOS, Contractor shall, on a monthly basis, submit its Reporting Form ("Report") in the format shown in Exhibit A-4 ("Microsoft Premier Support Services Customer Facing Report") to the applicable County Project Manager with a copy to the County Program Manager. Each Report shall include at least:

- a) The identifying County number of this Contract;
- b) The identifying number or other designation of the SOS as mutually agreed to by County and Contractor;

- c) A description of the Services provided for which Decrement is claimed;
- d) The name(s) and titles of the individual(s) who performed the work;
- e) The total amount of the Decrement;
- f) The amount of the "Total Maximum Amount" remaining on the SOS after subtracting previously billed and current charges;
- g) Any other relevant information requested by County.

5.5.5 Invoice / Decrement - Related Disputes.

If disputes arise between the parties regarding invoices or Decrements and are not resolved within thirty (30) calendar days, the parties shall follow the procedures set forth in Sub-Paragraph 8.31 (Dispute Resolution).

- 5.5.6 All invoices submitted by the Contractor for payment must have the written approval of the County Project Manager prior to any payment thereof. In no event shall the County be liable or responsible for any payment prior to such written approval. Approval for payment will not be unreasonably withheld.
- 5.5.7 County shall not pay Contractor for any amounts not specified in each applicable SOS. County shall not, under any circumstances, pay Contractor separately for any travel time, vacation, sick leave, per diem, expenses, and/or any other costs and/or out-of-pocket expenses for any services rendered under this Contract or any SOS issued hereunder.
- 5.5.8 Commencing on the Effective Date of this Contract, County shall pay fees to Contractor in accordance with the rates set forth in Exhibit B. On the first and each following anniversary of the Effective Date for the remaining term of this Contract, the fees set forth in Exhibit B shall be increased by the percentage increase, if any, up to a maximum of three percent (3%), that Contractor has applied to its published Public Sector Rates for the then-current Contractor fiscal year. Any such fee increases shall be applied only to Statement of Services executed after the applicable anniversary. In no event shall Contractor invoice County

separately for any out-of-pocket expenses being paid under any Statement of Services. Should Contractor's published Public Sector Rates decrease, such lower rates shall be immediately extended to County for all existing and subsequent SOSs.

- 5.5.9 Contractor's fees shall include any sales taxes, duties, tariffs, levies or other governmental charges or expenses (including, without limitation, any value added taxes) to which such fees are subject. Contractor is responsible for taxes based on its personal property ownership and/or net income.

5.6 **Work Approval Testing and Acceptance**

5.6.1 Acceptance Criteria

Contractor will consult with each County Project Manager to establish a mutually agreed to Acceptance Test Plan, a mutually agreed to process and procedure by which the parties will verify that the Services meet the Acceptance Criteria, the agreed upon objective standards by which the parties will verify that the Services Deliverables meet the specifications and/or requirements set forth in the SOS. Conformity to the Acceptance Criteria, as judged by the County Project Manager in his/her sole discretion, shall determine whether County will accept or reject the Services.

5.6.2 Process for Acceptance Test

Each County Project Manager shall appoint personnel who shall attend, participate in, and verify the results of the Acceptance Testing. Contractor shall demonstrate that all work being tested either meets or exceeds the Acceptance Criteria. Testing shall include or be performed in the presence of County representatives.

5.6.3 Acceptance Tests

The parties shall, in each instance, mutually agree upon the Acceptance Criteria and testing which will apply to the Services Contractor delivers when a County Department orders Services from the SOS it has in place with Contractor. When the County Department is satisfied that the Services at least meet the Acceptance Criteria the parties previously agreed upon, the applicable County Project Manager shall

issue Contractor an Acceptance Certificate, copy the County Program Manager, and close the matter. Contractor shall not under any circumstances Decrement a County Department's SOS for any Service Contractor has provided until the County Department has accepted those Services and issued an Acceptance Certificate.

5.6.4 Decrements

For each SOS, Contractor, on a monthly basis shall submit to the County Program Manager and the applicable County Project Manager a copy of the Report. Along with cumulative information that is required by Exhibit C ("SOS Issuance Process"), the Report shall separately state all Decrements for which Contractor is charging the County for the reporting period. The County shall use the report to verify that all Decrements for which Contractor has charged the Decrement for the reporting period are supported by an Acceptance Certificate or Accepted in accordance with the applicable SOS. Where Contractor has not provided an Acceptance Certificate for a Decrement and the applicable County Project Manager is not otherwise able to verify that the Decrement is supported by an Acceptance Certificate, the County shall challenge the Decrement and Contractor shall reverse the Decrement until the matter is resolved through Sub-Paragraph 8.31 (Dispute Resolution).

5.6.5 Notice of Deficiencies

If the applicable County Project Manager makes a good faith determination that Contractor's work as a whole, or a component thereof, has failed to successfully complete an Acceptance Test, he/she shall promptly notify Contractor's Support Practice Manager in writing of the Deficiencies identified at that time, specifying with as much detail as possible, the manner in which the work failed to pass the applicable Acceptance Test ("Notice").

5.6.6 Correction of Deficiencies

Upon receipt of Notice from County, Contractor shall promptly commence all reasonable efforts to correct the Deficiencies County identifies. Contractor shall notify the applicable County Project Manager when it has corrected the Deficiencies and the Acceptance Test shall resume. For each SOS, Contractor shall, at no additional cost to County, be

required to continue its efforts to correct any remaining Deficiencies until Contractor succeeds.

5.6.7 Time for Correction of Deficiencies

Contractor shall correct to the satisfaction of County, at no additional cost to County, all Deficiencies in the Services. Contractor shall initiate repairs on Deficiencies which have a critical or significant impact on County's operations within two (2) business days following notice from County and shall use all reasonable efforts to resolve the Deficiencies in the time frame set forth in the applicable SOS. Contractor shall be solely liable for any direct costs incurred by County associated with any Deficiencies.

5.6.8 Remedy

In the event Contractor fails the Acceptance Test, County may pursue any and all remedies set forth in this Contract or as otherwise provided at law and/or in equity.

5.6 **Warranty**

5.6.1 Warranty

Contractor warrants and represents that: (1) all work and Services shall be performed in a professional and workmanlike manner, with all necessary care, skill and diligence, and in accordance with the applicable SOS and other requirements set forth herein; (2) all work and Services shall conform to the requirements and specifications of the respective SOS throughout the term of this Contract, including any and all extensions thereof; and, (3) all work and Services shall be free of Deficiencies.

5.6.2 Legal Proceedings

Contractor represents, warrants, and agrees that there are no existing or threatened legal proceedings against Contractor that would have an adverse effect upon its ability to perform its obligations under this Contract or its financial condition or operations and shall notify County promptly in writing of any change in this circumstance.

5.6.3 Disabling Devices

Contractor represents, warrants, and agrees that Contractor will not cause any interruption of the operations of, or vulnerability to, the work, or County's computer and network systems through any device, method or means including, without limitation, the use of any "virus," "worm," "lockup," "time bomb," "key lock," device or program, or disabling or defective code, which has the potential or capability of causing any interruption of the operations of, or accessibility to, the work, or County's computer and network systems or which could alter, destroy, or inhibit the use of the work or County's computer and network systems, or the data contained therein which could block access to or prevent the use of the work or County's computer and network systems.

5.6.4 Disclaimer

EXCEPT FOR THE EXPRESS WARRANTIES AND REPRESENTATIONS PROVIDED IN THIS CONTRACT, ANY SOS EXECUTED HEREUNDER AND ANY UNDERLYING PRODUCT PURCHASE AGREEMENTS AND/OR PURCHASE ORDERS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CONTRACTOR DISCLAIMS AND EXCLUDES ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS WHETHER EXPRESS, IMPLIED OR STATUTORY INCLUDING, BUT NOT LIMITED TO, REPRESENTATIONS, WARRANTIES, OR CONDITIONS OF TITLE, NON-INFRINGEMENT, SATISFACTORY CONDITION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY SERVICES, SERVICE DELIVERABLES, FIXES, PRODUCTS, OR ANY OTHER MATERIALS OR INFORMATION.

6.0 ADMINISTRATION OF CONTRACT - COUNTY

COUNTY ADMINISTRATION

A listing of all County Administration staff referenced in the following subparagraphs are designated in Exhibit E - County's Administration. The County will notify the Contractor in writing of any change in the names or addresses shown.

6.1 County's Program Director

Program Director shall, on behalf of County, have the authority and responsibility to confirm by administrative oversight and monitoring of Contractor's services provided hereunder, to assure that:

- a) County Departments utilize the Contract to acquire Services only as is provided herein;
- b) Contractor provides Services as required by the SOSs that the County enters into with Contractor;
- c) Each SOS is duly approved and executed by the Program Manager, or at his/her direction, by the Program Manager and, once approved and executed, is issued to Contractor's Contracts Manager for Contractor's implementation;
- d) All directives of County's Board of Supervisors are implemented;
- e) All issues, problems, or disputes which cannot be resolved by the County Program Manager under Sub-Paragraph 8.31 ("Dispute Resolution") are addressed; and,
- f) Any Debarment proceeding is conducted in accordance with the provisions of Chapter 2.202 of the Los Angeles County Code.

6.2 County Program Manager

The County Program Manager, on behalf of County, has the administrative responsibility to assist the County Program Director and each County Project Manager as they may require in fulfilling their respective duties by:

- a) Jointly, with County's Project Managers, developing each SOS in accordance with requirements set forth in Exhibit C ("SOS Issuance Process");
- b) Forwarding the SOS to the County Program Director for approval, if applicable;
- c) Jointly, with County's Project Managers, reviewing, and approving or rejecting all Contractor personnel proposed to provide Services under each SOS, and once approved, each change of Contractor personnel that Contractor proposes or County requests;
- d) Assuring that each proposed SOS conforms to the guidelines which are set forth in this Contract for Services;
- e) Negotiating and recommending changes to any approved SOS

by use of the Change Notice process provided in Sub-paragraph 8.1.4 ("**SOS Change Notices**") and, when assured that the proposed changes meet County's requirements under this Contract, forwarding any proposed change to the County Program Director for approval;

- f) Reviewing all Contractor produced usage reports under the SOS to (i) verify that each County Project Manager authorized each Decrement to that SOS by issuing an Acceptance Certificate, and (ii) follow-up as necessary upon such review;
- g) Meeting with Contractor's Support Practice Manager, as required, to assure the orderly and satisfactory progress of Contractor's work on each outstanding SOS; and,
- h) Taking action to resolve any issues, problems, or disputes that were not resolved by each County Project Manager.

6.3 County's Project Manager

Each County Project Manager shall be identified by name in each SOS and may be the CIO of the County Department receiving Services under the respective SOS. Each County Project Manager or his/her designee shall, in accordance with the provisions of this Paragraph 6 ("Administration of Contract - County") and Exhibit C ("SOS Issuance Process"), approve each proposed SOS for the subject County Department and shall be authorized to delegate, as necessary and appropriate, SOS-related operational responsibilities to appropriate managers within the County Department. County Project Managers and their delegates shall:

- a) Prepare a draft SOS which identifies the County Department's technical and functional requirements and forward the draft SOS to the County Program Manager for review and final approval by the County Program Director;
- b) Review, approve or reject, with the concurrence of County's Program Manager, all Contractor personnel proposed to provide Services under each SOS and, once approved, review, approve or reject each change of Contractor personnel that is proposed by Contractor or requested by County;
- c) Carry out the day-to-day operational and administrative responsibilities of the Contract by assuring that County has the appropriate representation at all meetings and keeping and updating records of program activity;

- d) Recommend and negotiate changes to each executed SOS by use of process set forth in Sub-paragraph 8.1.5 and, when assured that the proposed changes meet County's requirements under this Contract, forward the proposed change to County's Program Manager for review and, thereafter, approval by County's Program Director;
- e) Participate in all Acceptance Testing or other review for compliance by Contractor with the terms and conditions of Service delivery under the SOSs to which County's Project Manager is assigned;
- f) Identify Deficiencies and assure that those Deficiencies are corrected by Contractor as provided in this Contract and, where not corrected, notify the County Program Manager so that County may pursue its rights and remedies as provided under this Contract regarding the Deficiencies Contractor does not correct;
- g) Issue Acceptance Certificates to Contractor when appropriate and as required by this Contract
- h) Monitor and report on Contractor's SOS performance and provide regular status reports as required by the County Program Manager;
- i) Approve or disapprove all Contractor SOS invoices for which he/she is County Project Manager, and forward the invoice to the County Program Manager for review, approval and payment or disapproval;
- j) Inspect any and all equipment, services, and/or other work provided by or on behalf of Contractor; and,
- k) Coordinate, meet, and/or confer with Contractor's Support Practice Manager on a regular basis with respect to all work being performed on active tasks and deliverables and provide direction to Contractor regarding County policy, information and procedural requirements.

7.0 ADMINISTRATION OF CONTRACT – CONTRACTOR

A listing of all of Contractor's Administration referenced in the following subparagraphs are designated in Exhibit F - Contractor's Administration. The Contractor will notify the County in writing of any change in the names or addresses shown.

7.1 Contractor's Contracts Manager

Contractor's Contracts Manager shall have the responsibility for all contractual and legal aspects of Contractor's performance of its obligations under this Contract. Contractor's Contracts Manager shall carry out these responsibilities by the following activities:

- a) Reviewing and approving all SOS documents on behalf of Contractor, and specifically, as to each Contractor proposal to provide Services, Contractor's Contracts Manager shall assure that the Contractor proposal is fully responsive to the SOS which County's Program Director submitted to Contractor's Contracts Manager;
- b) Approving each Contractor proposal, submitting it to County's Program Manager, and meeting and conferring with County's Program Manager as required to resolve any issues County has regarding the responsiveness of Contractor's proposal;
- c) Resolving Contractor business, contractual and administrative matters relating to this Contract that cannot be resolved by Contractor's Support Practice Manager;
- d) Resolving all issues, problems, or disputes which may arise which cannot be resolved by Contractor's Support Practice Managers under Sub-Paragraph 8.31 ("Dispute Resolution"); and,
- e) Receiving all notices pursuant to this Contract and taking such other steps as may be necessary to fulfill Contractor's responsibilities hereunder.

7.2 Contractor's Support Practice Manager

Contractor's Support Practice Manager shall be responsible for the overall administration of this Contract with the County. Contractor's Support Practice Manager shall carry out such responsibilities through the following activities:

- a) Assuring that Contractor responds fully and completely to County's needs for Services by developing the scope of and then drafting and finalizing the SOS to meet the County's needs as stated in the proposal County submits to Contractor, obtaining County's Acceptance of the Services Contractor proposes to provide, and providing oversight of Contractor's provision of those Services;
- b) Assuring that Contractor personnel perform their assigned work as required;

- c) Taking such corrective action as is necessary when Deficiencies in Services are identified by either Contractor or County;
- d) Meeting and conferring on a regular basis with the County Project Managers assigned to the SOSs;
- e) Providing regular status reports to County's Program Manager;
- f) Keeping and updating all records relating to this Contract Contractor provides to County;
- g) Meeting and/or conferring with County's Program Manager on a regular basis as mutually agreed with respect to all work being performed on SOS tasks and Services.
- h) Resolving any issues, problems or disputes which may arise which cannot be resolved by Contractor's Services Account Executive through Paragraph 8.31 ("Dispute Resolution"); and,
- i) Representing Contractor in the Dispute Resolution procedure as required in Paragraph 8.31 ("Dispute Resolution");
- j) Assuring that Contractor fulfills its reporting responsibilities in every respect regarding project activity;

7.3 Contractor's Services Account Executive

Contractor's Services Account Executive shall be responsible for drafting, finalizing, delivering and processing all SOSs, including change orders. Contractor's Services Account Executive shall provide prompt responses to all issues and questions regarding SOSs.

7.4 Changes in Personnel

County may require Contractor to remove and replace any Contractor personnel upon County's request.

7.5 Contractor's Staff Identification

Contractor shall provide, at Contractor's expense, all staff providing services under this Contract with a photo identification badge.

7.6 Background and Security Investigations

7.6.1 Background Investigations

At the discretion and request of County, all Contractor personnel performing work under any SOS may be required to undergo and pass, to the satisfaction of County, background and security investigation(s) as a condition of beginning and continuing work under such SOS. County shall receive updates from the investigating agency in the event that the status of the Contractor employee changes. A Contractor employee shall have the right to refuse to submit to the aforementioned background and security investigation. In such event, the Contractor employee shall be withdrawn and replaced by Contractor. County shall not transmit to Contractor any information pertaining to the results of such background security investigation(s) except whether the subject of the investigation has passed or failed.

7.6.2 Access to Court Facilities

Notwithstanding the foregoing, all Contractor personnel requiring access to court facilities shall undergo and pass such background and security investigation(s) prior to obtaining such access.

7.6.3 Expenses for Investigations

The investigation(s) shall be at Contractor's expense and shall be conducted by an investigation organization licensed by the State of California. Such expense shall be invoiced to Contractor as set forth in the applicable SOS. The investigation(s) may consist of a background and fingerprint check with the Los Angeles County Sheriff's Department, the California Department of Justice, the Federal Bureau of Investigation, and the National Crime Information Center. Contractor shall instruct and hereby authorizes the investigation organization to submit the results of the investigation(s) directly to County.

7.6.4 Standards

The standards used by County in making a determination of "pass" or "does not pass" will generally be the standards used by County for placement of County employees in sensitive positions. However, County reserves the right to use higher standards for Contractor personnel for individual projects, or portions thereof, and/or for access to specific locations.

7.6.5 Denial or Termination of Access to Facilities

A court and/or County organization may immediately deny or terminate court and/or County facility access to Contractor personnel who do not pass such investigation(s) to the satisfaction of the court and/or County organization, or whose background or conduct is incompatible with court and/or County facility access, as determined in the sole discretion of the court and/or County organization. Any disqualification of any Contractor personnel pursuant to this Sub-paragraph 7.6 shall not relieve Contractor of its obligation(s) to complete all requirements of this Contract including, but not limited to, those of any and all SOSs.

7.7 CONFIDENTIALITY

- 7.7.1 Except as expressly provided for in Sub-paragraph 7.7.7 or as disclosure may be required by any applicable law including, but not limited to, the California Public Records Act, for a period of five (5) years after initial disclosure, neither party shall use the other's Confidential Information without the other's written consent except in furtherance of this business relationship or disclose the other's Confidential Information except (i) to obtain advice from legal or financial consultants, or (ii) if compelled by law, in which case the party compelled to make the disclosure will use its best efforts to give the other party notice of the requirement so that the disclosure can be contested.
- 7.7.2 County and Contractor shall take reasonable precautions to safeguard each other's Confidential Information. Such precautions will be at least as great as those each party takes to protect its own Confidential Information. Each party may disclose the other's Confidential Information to its personnel only on a need- to-know basis. When Confidential Information is no longer necessary to perform any obligation under any SOS, the receiving party will, at the other's request, either return it or destroy it.
- 7.7.3 In accordance with all applicable federal, state, and local laws, regulations, ordinances, and directives relating to confidentiality, Contractor shall protect the security of and keep confidential all records, materials, documents, data, and/or other information received, obtained, and/or produced under the provisions of this Contract. Contractor shall use

whatever security measures are necessary to protect all such records, materials, documents, data and/or other information from loss; damage, and/or unauthorized dissemination by any cause including, but not limited to, fire and theft.

- 7.7.4 Contractor shall not disclose to any person or entity any information identifying, characterizing, or relating to any trait, feature, function, risk, threat, vulnerability, weakness, or problem regarding any data or system security in County's computer system(s), nor any safeguard, counter-measure, contingency plan, policy, or procedure for any data or system security contemplated or implemented by County, without County's prior written consent as authorized by the County Program Director.
- 7.7.5 Contractor shall ensure that only those Contractor personnel required to perform the work shall have access to County records, materials, documents, data, and/or other information. All records, materials, documents, data, and/or other information of any kind obtained from County and all reports developed by Contractor under this Contract are confidential to and are solely the property of County.
- 7.7.6 Contractor shall ensure that said records, materials, documents, data, and/or other information of any kind obtained from County shall not be copied or reproduced by any method without the express written approval of the County Program Director. The provisions of this Sub-Paragraph 7.5.6 shall survive the expiration or other termination of this Contract.
- 7.7.7 Each party is free to develop its respective products independently without the use of the other's Confidential Information. Neither County nor Contractor is obligated to restrict the future work assignments of people who have had access to Confidential Information. In addition, County, Contractor and the people who have had access to Confidential Information are free to use the information that the people retain in their unaided memories related to information technology, including ideas, concepts, know-how or techniques, so long as such use does not disclose Confidential Information of the other party in violation of this Sub-Paragraph 7.5. This use will not grant either party any rights under the other's copyrights or patents and does not require payment of royalties or separate license.

- 7.7.8 Either party may provide suggestions, comments or other feedback to the other with respect to the other's Confidential Information. Feedback is voluntary and the party receiving feedback is not required to hold it in confidence, as long as feedback does not constitute Confidential Information. The party receiving feedback will not disclose the source of feedback without the providing party's consent. Feedback may be used for any purpose without obligation of any kind, as long as feedback does not constitute any Confidential Information.
- 7.7.9 Each party will immediately notify the other upon discovery of any unauthorized use or disclosure of the other party's Confidential Information and will cooperate reasonably to help the other regain possession of the Confidential Information and prevent further unauthorized use or disclosure.
- 7.7.10 Contractor may use any technical information it derives from providing services related to Contractor's products for problem resolution, troubleshooting, and product functionality enhancements and fixes for Contractor's knowledge base. Contractor agrees not to identify County or disclose any County Confidential Information in any item in the knowledge base.
- 7.7.11 Confidential Statutory Information means County records which are confidential pursuant to any and all federal, state, or local laws, regulations and directives relating to confidentiality. Contractor shall inform its employees and agents providing services hereunder of the confidentiality of such records, as well as the confidentiality provisions of this Contract. In lieu of Contractor's providing to County an executed Contractor Acknowledgment and Confidentiality Agreement in the forms shown in Exhibit J for each of its employees and agents performing Services under this Contract, Contractor may provide such acknowledgments on behalf of its personnel, and in that event Contractor shall indemnify, defend, and hold harmless the County from any and all liability arising from any unauthorized disclosure of Confidential Statutory Information by any Contractor employee, agent, or subcontractor, whether within the course and scope of employment or otherwise, and with or without cause and Contractor shall take all reasonable steps to prevent such personnel from continuing to disclose such Confidential Statutory Information.

7.7.12 Contractor shall not disclose any terms or conditions of or any circumstances or events which occur during the performance of this Contract to any person or entity except as may be otherwise provided herein or required by law. In the event Contractor receives any court or administrative agency order; service of process, or request by any person or entity (other than Contractor's professionals) for disclosure of any such details, Contractor shall immediately notify the applicable County Project Manager and the County Program Manager. Thereafter, Contractor shall comply with such order, process or request only to the extent required by applicable law. Notwithstanding the preceding sentence, to the extent permitted by law, Contractor shall delay such compliance and fully cooperate with County to obtain relief from such obligations to disclose until County shall have been given a reasonable opportunity to obtain such relief. However, in recognizing Contractor's need to identify its services and related clients to sustain itself, County shall not inhibit Contractor from publishing its role under this Contract within the following conditions: (a) Contractor shall develop all publicity material in a professional manner. (b) During the term of this Contract, Contractor shall not publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of County without the prior written consent of County's Program Manager. County shall not unreasonably withhold or delay such written consent. (c) Contractor may, without the prior written consent of County, indicate in its proposals and sales materials that it has been awarded this Contract with County, provided that the requirements of this Sub-Paragraph 7.7 shall apply.

8.0 STANDARD TERMS AND CONDITIONS

8.1 AMENDMENTS

- 8.1.1 Except as otherwise expressly provided in this Subparagraph 8.1 (Amendments), for any change which affects the scope of work, term, contract sum, payments, or any term or condition included under this Contract, an amendment to the Contract shall be prepared and executed by the Contractor and by the Board of Supervisors.
- 8.1.2 The County's Board of Supervisors or Chief Executive Officer or designee may require the addition and/or change of certain

terms and conditions in the Contract during the term of this Contract. The County reserves the right to require additions and/or changes as required by the County's Board of Supervisors or Chief Executive Officer. To implement such changes, an Amendment to the Contract shall be prepared and executed subject to the mutual agreement of the Contractor and the CIO.

- 8.1.3 The Board of Supervisors may at its sole discretion, authorize extensions of time as defined in Paragraph 4.0 - Term of Contract. The Contractor agrees that such extensions of time shall not change any other term or condition of this Contract during the period of such extensions. To implement an extension of time, an Amendment to the Contract shall be prepared and executed by the Contractor and the CIO or his/her designee as authorized by the Board of Supervisors.
- 8.1.4 For any changes to any of the transactional Exhibits (i.e. Exhibits A, inclusive, B, C, E and F) to the Contract, an Amendment shall be prepared and executed by the CIO, or his/her designee, and mutually agreed in writing by Contractor.
- 8.1.5 For any change which affects the scope of work, period of performance, payments, or any other aspect of a SOS, without affecting any term or condition of this Contract, a Change Notice shall be prepared and executed by the CIO, or his/her designee, and mutually agreed in writing by Contractor.

8.2 ASSIGNMENT AND DELEGATION

- 8.2.1 The Contractor shall not assign its rights or delegate its duties under this Contract, or both, whether in whole or in part, without the prior written consent of County, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this subparagraph, County consent shall require a written Amendment to the Contract, which is formally approved and executed by the parties. Any payments by the County to any approved delegatee or assignee on any claim under this Contract shall be deductible, at County's sole discretion, against the claims, which the Contractor may have against the County.
- 8.2.2 Shareholders, partners, members, or other equity holders of

Contractor may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of Contractor to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Contract, such disposition is an assignment, and such assignment of this Contract requires the prior written consent of County in accordance with applicable provisions of this Contract.

- 8.2.3 Any assumption, assignment, delegation, or takeover of any of the Contractor's duties, responsibilities, obligations, or performance of same by any person or entity other than the Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without County's express prior written approval, shall be a material breach of the Contract which may result in the termination of this Contract for default. In the event of such termination, County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.

8.3 AUTHORIZATION WARRANTY

The Contractor represents and warrants that the person executing this Contract for the Contractor is an authorized agent who has actual authority to bind the Contractor to each and every term, condition, and obligation of this Contract and that all requirements of the Contractor have been fulfilled to provide such actual authority.

8.4 BUDGET REDUCTIONS

In the event that the County's Board of Supervisors adopts, in any fiscal year, a County Budget which provides for reductions in the salaries and benefits paid to the majority of County employees and imposes similar reductions with respect to County contracts, the County reserves the right to reduce its payment obligation under this Contract correspondingly for that Fiscal Year and any subsequent Fiscal Year during the term of this Contract (including any extensions), and the Services to be provided by the Contractor under this Contract shall also be reduced correspondingly. The County's notice to the Contractor regarding said reduction in payment

obligation shall be provided within thirty (30) calendar days of the County's Board of Supervisors' approval of such actions.

8.5 INTENTIONALLY OMITTED

8.6 COMPLIANCE WITH APPLICABLE LAW

In the performance of this Contract, Contractor shall comply with all applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures, and all provisions required thereby to be included in this Contract are hereby incorporated herein by reference. Contractor shall have up to fifteen (15) Days to correct any noncompliance with County rules, regulations, ordinances, guidelines and directives following written notice from County to Contractor, including written copies of such applicable rules, regulations, ordinances, guidelines and/or directives.

8.7 COMPLIANCE WITH CIVIL RIGHTS LAWS

The Contractor hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17), to the end that no person shall, on the grounds of race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract. The Contractor shall comply with Exhibit D - Contractor's EEO Certification.

8.8 COMPLIANCE WITH THE COUNTY'S JURY SERVICE PROGRAM

8.8.1 Jury Service Program:

This Contract is subject to the provisions of the County's ordinance entitled Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code, a copy of which is attached as Exhibit H and incorporated by reference into and made a part of this Contract.

8.8.2 Written Employee Jury Service Policy.

1. Unless the Contractor has demonstrated to the County's satisfaction either that the Contractor is not a

“Contractor” as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that the Contractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), the Contractor shall have and adhere to a written policy that provides that its Employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the Employee’s regular pay the fees received for jury service.

2. For purposes of this sub-paragraph, “Contractor” means a person, partnership, corporation or other entity which has a contract with the County or a subcontract with a County Contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more County contracts or subcontracts. “Employee” means any California resident who is a full-time employee of the Contractor. “Full-time” means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the County, or 2) Contractor has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If the Contractor uses any Subcontractor to perform services for the County under the Contract, the Subcontractor shall also be subject to the provisions of this sub-paragraph. The provisions of this sub-paragraph shall be inserted into any such subcontract agreement and a copy of the Jury Service Program shall be attached to the agreement.
3. If the Contractor is not required to comply with the Jury Service Program when the Contract commences, the Contractor shall have a continuing obligation to review the applicability of its “exception status” from the Jury Service Program, and the Contractor shall immediately notify the County if the Contractor at any time either comes within the Jury Service Program’s definition of “Contractor” or if the Contractor no longer qualifies for an

exception to the Jury Service Program. In either event, the Contractor shall immediately implement a written policy consistent with the Jury Service Program. The County may also require, at any time during the Contract and at its sole discretion, that the Contractor demonstrate, to the County's satisfaction that the Contractor either continues to remain outside of the Jury Service Program's definition of "Contractor" and/or that the Contractor continues to qualify for an exception to the Program.

4. Contractor's violation of this sub-paragraph of the Contract may constitute a material breach of the Contract. In the event of such material breach, County may, in its sole discretion, terminate the Contract for default and/or bar the Contractor from the award of future County contracts for a period of time consistent with the seriousness of the breach.

8.9 CONFLICT OF INTEREST

- 8.9.1 No County employee whose position with the County enables such employee to influence the award of this Contract or any competing Contract, and no spouse or economic dependent of such employee, shall be employed in any capacity by the Contractor or have any other direct or indirect financial interest in this Contract. No officer or employee of the Contractor who may financially benefit from the performance of work hereunder shall in any way participate in the County's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the County's approval or ongoing evaluation of such work.
- 8.9.2 The Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Contract. The Contractor warrants that it is not now aware of any facts that create a conflict of interest. If the Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the

provisions of this sub-paragraph shall be a material breach of this Contract.

8.10 CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFF/OR RE-EMPLOYMENT LIST

Should the Contractor require additional or replacement personnel after the Effective Date of this Contract to perform the services set forth herein, the Contractor shall give consideration for such employment openings to qualified, permanent County employees who are targeted for layoff or qualified, former County employees who are on a re-employment list during the life of this Contract. The County will refer such employees to the Contractor.

8.11 CONSIDERATION OF HIRING GAIN/GROW PARTICIPANTS

8.11.1 Should the Contractor require additional or replacement personnel after the Effective Date of this Contract, the Contractor shall give consideration for any such employment openings to participants in the County's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet the Contractor's minimum qualifications for the open position. For this purpose, consideration shall mean that the Contractor will interview qualified candidates. The County will refer GAIN/GROW participants by job category to the Contractor.

8.11.2 In the event that both laid-off County employees and GAIN/GROW participants are available for hiring, County employees shall be given first priority.

8.12 CONTRACTOR RESPONSIBILITY AND DEBARMENT

8.12.1 Responsible Contractor

A responsible Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the County's policy to conduct business only with responsible Contractors.

8.12.2 Chapter 2.202 of the County Code

The Contractor is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires

information concerning the performance of the Contractor on this or other contracts which indicates that the Contractor is not responsible, the County may, in addition to other remedies provided in the Contract, debar the Contractor from bidding or proposing on, or being awarded, and/or performing work on County contracts for a specified period of time, which generally will not exceed five years but may exceed five years or be permanent if warranted by the circumstances, and terminate any or all existing contracts the Contractor may have with the County.

8.12.3 Non-responsible Contractor

The County may debar a Contractor if the Board of Supervisors finds, in its discretion, that the Contractor has done any of the following: (1) violated a term of a contract with the County or a nonprofit corporation created by the County, (2) committed an act or omission which negatively reflects on the Contractor's quality, fitness or capacity to perform a contract with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.

8.12.4 Contractor Hearing Board

1. If there is evidence that the Contractor may be subject to debarment, the County's Chief Information Office will notify the Contractor in writing of the evidence which is the basis for the proposed debarment and will advise the Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.
2. The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Contractor and/or the Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether the Contractor should be debarred, and, if so, the appropriate length of time of the debarment. The Contractor and the

County's Chief Information Office shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.

3. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision, and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.
4. If a Contractor has been debarred for a period longer than five (5) years, that Contractor may after the debarment has been in effect for at least five (5) years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that the Contractor has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the County.
5. The Contractor Hearing Board will consider a request for review of a debarment determination only where (1) the Contractor has been debarred for a period longer than five (5) years; (2) the debarment has been in effect for at least five (5) years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.

6. The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

8.12.5 Subcontractors of Contractor

These terms shall also apply to Subcontractors of County Contractors.

8.13 CONTRACTOR'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW

The Contractor acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law. The Contractor understands that it is the County's policy to encourage all County Contractors to voluntarily post the County's "Safely Surrendered Baby Law" poster in a prominent position at the Contractor's place of business. The Contractor will also encourage its Subcontractors, if any, to post this poster in a prominent position in the Subcontractor's place of business. The County's Department of Children and Family Services will supply the Contractor with the poster to be used. Information on how to receive the poster can be found on the Internet at www.babysafela.org.

8.14 CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM

8.14.1 The Contractor acknowledges that the County has established a goal of ensuring that all individuals who benefit financially from the County through contracts are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon the County and its taxpayers.

8.14.2 As required by the County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting the Contractor's duty under this Contract to comply with all applicable provisions of law, the Contractor warrants that it is now in compliance and shall during the term of this Contract maintain in compliance with employment and wage reporting

requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

8.15 County's Quality Assurance Plan

The County or its agent will evaluate the Contractor's performance under this Contract on not less than an annual basis. Such evaluation will include assessing the Contractor's compliance with all Contract terms and conditions and performance standards. Contractor deficiencies which the County determines are severe or continuing and that may place performance of the Contract in jeopardy if not corrected will be reported to the Board of Supervisors.

The report will include improvement/corrective action measures taken by the County and the Contractor. If improvement does not occur consistent with the corrective action measures, the County may terminate this Contract for default or impose other penalties as specified in this Contract.

8.16 DAMAGE TO COUNTY FACILITIES, BUILDINGS OR GROUNDS

8.16.1 The Contractor shall repair, or cause to be repaired, at its own cost, any and all damage to County facilities, buildings, or grounds caused by the Contractor or employees or agents of the Contractor. Such repairs shall be made immediately after the Contractor has become aware of such damage, but in no event later than thirty (30) days after the occurrence.

8.16.2 If the Contractor fails to make timely repairs, County may make any necessary repairs. All costs incurred by County, as determined by County, for such repairs shall be repaid by the Contractor by cash payment upon demand.

8.17 EMPLOYMENT ELIGIBILITY VERIFICATION

8.17.1 The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirements set forth in Federal and State

statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), or as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by law.

- 8.17.2 The Contractor shall indemnify, defend, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

8.18 FACSIMILE REPRESENTATIONS

The County and the Contractor hereby agree to regard facsimile or other electronically delivered representations of original signatures of authorized officers of each party, when appearing in appropriate places on the Amendments prepared pursuant to Sub-paragraph 8.1, and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to Amendments to this Contract, such that the parties need not follow up facsimile or other electronically delivered signature transmissions of such documents with subsequent (non-facsimile) transmission of "original" versions of such documents.

8.19 FAIR LABOR STANDARDS

The Contractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act and shall indemnify, defend, and hold harmless the County and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by the Contractor's employees for which the County may be found jointly or solely liable.

8.20 FORCE MAJEURE

- 8.20.1 Neither party shall be liable for such party's failure to perform its obligations under and in accordance with this Contract, if such failure arises out of fires, floods, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by such party or any of such party's Sub-Contractors), freight embargoes, or other similar events to those described above, but in every such case the failure to perform must be totally beyond the control and without any fault or negligence of such party (such events are referred to in this subparagraph as "force majeure events").
- 8.20.2 In the event Contractor's failure to perform arises out of a force majeure event, Contractor agrees to use commercially reasonable best efforts to obtain goods or services from other sources, if applicable, and to otherwise mitigate the damages and reduce the delay caused by such force majeure event.

8.21 GOVERNING LAW, JURISDICTION, AND VENUE

This Contract shall be governed by, and construed in accordance with, the laws of the State of California. The Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California (except with respect to claims that are subject to exclusive federal subject matter jurisdiction, as to which Contractor agrees and consents to the exclusive jurisdiction of the Federal District Court of the Central District of California) for all purposes regarding this Contract and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles, California.

8.22 INDEPENDENT CONTRACTOR STATUS

- 8.22.1 This Contract is by and between the County and the Contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the County and the Contractor. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.
- 8.22.2 The Contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Contract all compensation and benefits. The County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other

compensation, benefits, or taxes for any personnel provided by or on behalf of the Contractor.

8.22.3 The Contractor understands and agrees that all persons performing work pursuant to this Contract are, for purposes of Workers' Compensation liability, solely employees of the Contractor and not employees of the County. The Contractor shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of the Contractor pursuant to this Contract.

8.22.4 The Contractor shall adhere to the provisions stated in Subparagraph 7.7 - Confidentiality.

8.23 INDEMNIFICATION

8.23.1 Contractor agrees to indemnify, defend and hold harmless County and County special districts and their elected and appointed officers, employees and agents from and against any third party claims for damages for bodily injury (including death) and damage to real property or tangible personal property for which it is legally liable to that third party and pay all cost, damages and attorney fees that a court finally awards or that are in a settlement approved by Contractor. Upon being served with any action or claim, County shall promptly notify Contractor in writing of same. County shall permit Contractor to control the defense of any action or claim to the extent permitted by law, and shall cooperate with Contractor in the defense.

8.23.2 Contractor shall indemnify, defend, and hold harmless County against any and all liability arising from any claims made by an unaffiliated third party that any product, fix, or Service Deliverables infringes its patent, copyright or trademark or misappropriates its trade secret and will pay the amount of any resulting adverse final judgment (or settlement to which Contractor consents). County shall endeavor to notify Contractor promptly in writing of the claim and shall give Contractor sole control over its defense or settlement subject to County's approval of Contractor's counsel, which approval shall not be unreasonably withheld. County agrees to provide

Contractor with reasonable assistance in defending the claim, and Contractor will reimburse County for expenses that County incurs in providing that assistance.

- 8.23.3 Contractor's obligations will not apply to the extent that liability is based on: (i) specifications, code, or materials County provides; (ii) County's running of the product, fix, or Service Deliverables after Contractor notifies County to discontinue running because of such a claim and after the County has a reasonable period of time to decess; (iii) County's combining or altering the product, fix or Service Deliverables with a non-Contractor product, data or business process unless Contractor required that County use that non-Contractor product, data or business process; (iv) damages attributable to the value of the use of a non-Contractor product, data or business process unless Contractor required that County use that product, data or business process; (v) County's altering the product, fix or Service Deliverables other than at the direction of Contractor; (vi) use of, or access to, products, fixes or Service Deliverables by any person or entity other than County or County's affiliates as permitted by Contractor; (vii) County's use of Contractor's trademark(s) without express written consent to do so; or (viii) for any trade secret claim, County's acquiring a trade secret (a) through improper means; (b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (c) from a person (other than Contractor or Contractor's affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret.
- 8.23.4 If Contractor receives information concerning an infringement claim related to a product, fix, or Service Deliverable, Contractor may, at its expense and without obligation to do so, either (i) procure for County the right to continue to run the allegedly infringing Service Deliverable, or (ii) modify the Service Deliverable or replace it with a functional equivalent to make it non-infringing, in which case County will stop running the allegedly infringing product, fix, or Service Deliverable immediately thereafter. If, as a result of an infringement claim, County's use of a product, fix, or Service Deliverable

is enjoined by a court of competent jurisdiction, Contractor will, at Contractor's option, either procure the right to continue its use, replace it with a functional equivalent, modify it to make it non-infringing, or refund the amount paid and terminate the license for and, as applicable to certain Service Deliverables, County's ownership rights in, the infringing Service Deliverable. The foregoing is not intended to be the County's sole and exclusive remedy.

8.24 GENERAL PROVISIONS FOR ALL INSURANCE COVERAGE

Without limiting Contractor's indemnification of County, and in the performance of this Contract and until all of its obligations pursuant to this Contract have been met, Contractor shall provide and maintain at its own expense coverage satisfying the requirements specified in Sub-paragraphs 8.24 and 8.25 of this Contract. These minimum insurance coverage terms, types and limits (the "Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon Contractor pursuant to this Contract. The County in no way warrants that the Required Insurance is sufficient to protect the Contractor for liabilities which may arise from or relate to this Contract. The Contractor will satisfy all insurance requirements through a program of self-insurance, commercial insurance, a combination of the two, or any similar risk financing alternative.

8.24.1 Evidence of Coverage and Notice to County

- Certificate(s) of insurance coverage (Certificate) satisfactory to County, and a copy of an Additional Insured endorsement confirming County and its Agents (defined below) has been given Insured status under the Contractor's General Liability policy, shall be delivered to County at the address shown below and provided prior to commencing services under this Contract.
- Renewal Certificates shall be provided to County not less than 10 days prior to Contractor's policy expiration dates. The County reserves the right to obtain complete, certified copies of any required Contractor and/or Sub-Contractor insurance policies at any time.
- Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Contract by name or number, and be signed by an

authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the Contractor identified as the contracting party in this Contract. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand (\$50,000.00) dollars, and list any County required endorsement forms.

- Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Contractor, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

Certificates and copies of any required endorsements shall be sent to:

County Program Manager

Contractor also shall promptly report to County any injury or property damage accident or incident, including any injury to a Contractor employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to Contractor. Contractor also shall promptly notify County of any third party claim or suit filed against Contractor which arises from or relates to this Contract, and could result in the filing of a claim or lawsuit against Contractor and/or County.

8.24.2 Additional Insured Status and Scope of Coverage

The County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively County and its Agents) shall be provided additional insured status under Contractor's General Liability policy with respect to liability arising out of Contractor's activities under this Contract.

8.24.3 Cancellation of or Changes in Insurance

Contractor shall provide County with, or Contractor's insurance policies shall contain a provision that County shall

receive, written notice of cancellation or any change in Required Insurance, including insurer, limits of coverage, term of coverage or policy period. The written notice shall be provided to County at least ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance for any other cancellation or policy change. Failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of the Contract, in the sole discretion of the County, upon which the County may suspend or terminate this Contract.

8.24.4 Failure to Maintain Insurance

Contractor's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Contract, upon which County immediately may withhold payments due to Contractor, and/or suspend or terminate this Contract.

8.24.5 Insurer Financial Ratings

Coverage shall be placed with insurers acceptable to the County with A.M. Best ratings of not less than A:VII unless otherwise approved by County.

8.24.6 Contractor's Insurance Shall Be Primary

Contractor's insurance policies, with respect to any claims related to this Contract, shall be primary with respect to all other sources of coverage available to Contractor. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Contractor coverage.

8.24.7 Deductibles and Self-Insured Retentions (SIRs)

Contractor's policies shall not obligate the County to pay any portion of any Contractor deductible or SIR.

8.24.8 Application of Excess Liability Coverage

Contractors may use a combination of primary, and excess insurance policies which provide coverage as broad as the underlying primary policies, to satisfy the Required Insurance provisions.

8.24.9 **Alternative Risk Financing Programs**

The County reserves the right to review, and then approve, Contractor use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. The County and its Agents shall be designated as an Additional Covered Party for Commercial General Liability to the extent of the contractual liabilities assumed in this Agreement under any approved program.

8.24.10 **County Review and Approval of Insurance Requirements**

The County reserves the right to review and adjust the Required Insurance provisions, conditioned upon County's determination of changes in risk exposures.

8.25 **INSURANCE COVERAGE**

8.25.1 **Commercial General Liability** insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming County and its Agents as an additional insured, with limits of not less than:

General Aggregate:	\$2 million
Products/Completed Operations Aggregate:	\$1 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$1 million

8.25.2 **Automobile Liability** insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of Contractor's use of autos pursuant to this Contract, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

8.25.3 **Workers Compensation and Employers' Liability**
Providing workers' compensation benefits, as required by the Labor Code of the State of California or by any other state, and for which Microsoft is responsible. In all cases the above insurance or qualified self-insurance satisfying statutory

requirements, which includes Employers' Liability coverage with limits of not less than the following: (i) \$1 million per accident; (ii) \$1 million Disease – Policy Limit; and (iii) \$1 million Disease – Each Employee. ; (ii) \$1 million Disease – Policy Limit; and (iii) \$1 million Disease – Each Employee

8.25.4 Unique Insurance Coverage

Professional Liability/Errors and Omissions

Insurance covering Contractor's liability arising from error, omission, negligent or wrongful act of Contractor, its officers or employees with limits of not less than \$1 million per occurrence and \$2 million aggregate. Further, the coverage shall also provide an extended two (2) year reporting period commencing upon termination, cancellation, or expiration of this Contract.

8.26 LIMITATION OF LIABILITY

- 8.26.1 Contractor's total liability to County in connection with each SOS issued under this Contract for direct damages, regardless of the theory of liability, shall not exceed two (2) times the total amount of the applicable SOS giving rise to the claims, or four hundred thousand dollars (\$400,000), whichever is greater. In the event that Contractor provides services under a Pro Bono SOS, however, then its liability to the County under this Sub-paragraph 8.26 shall not exceed five thousand dollars (\$5,000) for each such SOS.
- 8.26.2 Notwithstanding any provision of this Contract to the contrary, whether expressly or by implication, the Limitation of Liability set forth in Subparagraph 8.26.1 does not apply to the following, which are hereby expressly excluded from and not affected by such limitation: (a) Contractor's obligations under Sub-paragraphs 8.23 (Indemnification), 8.24 (General Provisions for All Insurance Coverage) and 8.25 (Insurance Coverage); (b) Contractor's liability to County for damages caused by gross negligence or willful misconduct to the extent caused by Contractor and/or its agent(s); (c) Contractor's obligations under Sub-paragraph 7.7 (Confidentiality); (d) Contractor's various obligations of indemnification throughout this Contract; and (e) the parties' obligations to each other arising from a breach of the other party's intellectual property rights.

8.26.3 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER CONTRACTOR NOR THE COUNTY SHALL BE LIABLE TO THE OTHER FOR ANY: (i) INDIRECT DAMAGES, (ii) CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR BUSINESS INTERRUPTION OR LOSS OF BUSINESS INFORMATION), (iii) SPECIAL, OR (iv) INCIDENTAL DAMAGES, OR (v) DAMAGES FOR LOSS OF PROFITS OR REVENUES ARISING IN CONNECTION WITH THIS CONTRACT, ANY SOS, SERVICES, SERVICE DELIVERABLES, FIXES, PRODUCTS, OR ANY OTHER MATERIALS OR INFORMATION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. THIS EXCLUSION OF LIABILITY DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ANY CONFIDENTIALITY OR INTELLECTUAL PROPERTY OBLIGATIONS.

8.27 INTENTIONALLY OMITTED

8.28 NONDISCRIMINATION AND AFFIRMATIVE ACTION

8.28.1 The Contractor certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and shall be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.

8.28.2 The Contractor shall certify to, and comply with, the provisions of Exhibit D - Contractor's EEO Certification.

8.28.3 The Contractor shall take reasonable efforts to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- 8.28.4 The Contractor certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation.
- 8.28.5 The Contractor certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract.
- 8.28.6 The Contractor shall allow County representatives access to the Contractor's employment records during regular business hours to verify compliance with the provisions of this Sub-paragraph 8.28 when so requested by the County.
- 8.28.7 If the County finds that any provisions of this Sub-paragraph 8.28 have been violated, such violation shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract. While the County reserves the right to determine independently that the anti-discrimination provisions of this Contract have been violated, in addition, a determination by the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission that the Contractor has violated Federal or State anti-discrimination laws or regulations shall constitute a finding by the County that the Contractor has violated the anti-discrimination provisions of this Contract.
- 8.28.8 The parties agree that in the event the Contractor violates any of the anti-discrimination provisions of this Contract, the County shall, at its sole option, be entitled to the sum of Five Hundred Dollars (\$500) pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Contract.

8.29 NON EXCLUSIVITY

Nothing herein is intended nor shall be construed as creating any exclusive arrangement with the Contractor. This Contract shall not restrict County from acquiring similar, equal or like goods and/or services from other entities or sources.

8.30 NOTICE OF DELAYS

Except as otherwise provided under this Contract, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that party shall, within one (1) business day, give notice thereof, including all relevant information with respect thereto, to the other party.

8.31 DISPUTE RESOLUTION

It is the intent of the parties that all disputes arising under this Contract be resolved expeditiously, amicably, and at the level within each party's organization that is most knowledgeable about the disputed issue. The parties understand and agree that the procedures outlined in this Sub-Paragraph are not intended to supplant the routine handling of inquiries and complaints through informal contact with their respective managers. Accordingly, for purposes of the procedures set forth in this paragraph, a "dispute" shall mean any action, dispute, claim, or controversy of any kind, whether in contract or tort, statutory or common law, legal or equitable, now existing or hereafter arising under or in connection with, or in any way pertaining to this Contract.

8.31.1 Contractor and County agree to act with urgency to mutually resolve any disputes which may arise with respect to this Contract. All such disputes shall be subject to the provisions of this Sub-Paragraph 8.31 (Dispute Resolution) (such provisions shall be collectively referred to as the "Dispute Resolution Procedure").

8.31.2 Contractor and County agree that, the existence and details of a dispute notwithstanding, both parties shall continue without delay their performance hereunder, provided that neither party is obliged to continue performance on the disputed portion of the Services unless mutually agreed upon.

8.31.3 If Contractor fails to continue without delay its performance hereunder, then any additional costs which may be incurred by Contractor or County as a result of Contractor's failure to continue to so perform shall be borne by Contractor, and Contractor shall make no claim whatsoever against County

for such costs. Contractor shall promptly reimburse County for such County costs, as determined by County, or County may deduct all such additional costs from any amounts due to Contractor from County.

- 8.31.4 If County fails to continue without delay to perform its responsibilities under this Contract, then any additional costs incurred by Contractor or County as a result of County's failure to continue to so perform shall be borne by County, and County shall make no claim whatsoever against Contractor for such costs. County shall promptly reimburse Contractor for all such additional Contractor costs subject to the approval of such costs by County.
- 8.31.5 In the event of any dispute between the parties with respect to this Contract, Contractor and County shall submit the matter to the applicable County Project Manager and Contractor Support Practice Manager for the purpose of endeavoring to resolve such dispute.
- 8.31.6 In the event that the County Project Manager and the Contractor Support Practice Manager are unable to resolve the dispute within a reasonable time not to exceed ten (10) days from the date of submission of the dispute to them, then the matter shall be immediately submitted to the County Program Manager and the Contractor Services Practice Leader for further consideration and discussion to attempt to resolve the dispute.
- 8.31.7 In the event that County Program Manager and the Contractor Services Practice Leader are unable to resolve the dispute within a reasonable time not to exceed ten (10) days from the date of submission of the dispute to them, then the matter shall be immediately submitted to Contractor's SLG/E General Manager and the County Program Director. These persons shall have ten (10) days to attempt to resolve the dispute.
- 8.31.8 In the event that at these levels, there is not a resolution of the dispute acceptable to both parties, then each party may assert its other rights and remedies provided under this Contract and/or its rights and remedies as provided by law.
- 8.31.9 All disputes utilizing this dispute resolution procedure shall be documented in writing by each party and shall state the specifics of each alleged dispute and all actions taken. The

parties shall act in good faith to resolve all disputes. At all three (3) levels described in this Sub-Paragraph 8.31 (Dispute Resolution Procedure), the efforts to resolve a dispute shall be undertaken by conference between the parties' respective representatives, either orally, by face to face meeting or by telephone, or in writing by exchange of correspondence.

8.31.10 Notwithstanding any other provision of this Contract, County's right to terminate this Contract pursuant to a Termination for Insolvency (Subparagraph 8.45), Termination for Convenience (Subparagraph 8.42) Termination for Improper Consideration (Subparagraph 8.44), and the parties' right to seek injunctive relief to enforce the provisions of Confidentiality (Subparagraph 7.7), shall not be subject to this Dispute Resolution Procedure. The preceding sentence is intended only as a clarification of the parties' rights, and shall not be deemed to impair any claims that one may have against the other, or any right to assert such claims after any such termination or such injunctive relief has been obtained.

8.31.11 Contractor shall bring to the attention of the applicable County Project Manager and the County Program Manager any dispute between the County and the Contractor regarding the performance of services as stated in this Contract.

8.32 NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT

The Contractor shall notify its employees, and shall require each Subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice No. 1015.

8.33 NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW

The Contractor shall notify and provide to its employees, and shall require each Subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is set forth in Exhibit I of this

Contract and is also available on the Internet at www.babysafela.org for printing purposes.

8.34 NOTICES

All notices or demands required or permitted to be given or made under this Contract shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the parties as identified in Exhibits E - County's Administration and F - Contractor's Administration. Addresses may be changed by either party giving ten (10) days' prior written notice thereof to the other party. The County Program Director shall have the authority to issue all notices or demands required or permitted by the County under this Contract.

8.35 PROHIBITION AGAINST INDUCEMENT OR PERSUASION

Notwithstanding the above, the Contractor and the County agree that, during the term of this Contract and for a period of one year thereafter, neither party shall in any way intentionally induce or persuade any employee of one party to become an employee or agent of the other party. No bar exists against any hiring action initiated through a public announcement.

8.36 PUBLIC RECORDS ACT

8.36.1 Any documents submitted by the Contractor; as well as all information obtained in connection with the County's right to audit and inspect the Contractor's documents, books, and accounting records pursuant to Sub-paragraph 8.38 - Record Retention and Inspection/Audit Settlement of this Contract become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret", "confidential", or "proprietary". The County shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.

8.36.2 In the event the County is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret", "confidential", or "proprietary", the Contractor agrees to defend and indemnify

the County in action or liability arising under the Public Records Act.

8.37 PUBLICITY

8.37.1 The Contractor shall not disclose any details in connection with this Contract to any person or entity except as may be otherwise provided hereunder or required by law. However, in recognizing the Contractor's need to identify its services and related clients to sustain itself, the County shall not inhibit the Contractor from publishing its role under this Contract within the following conditions:

- The Contractor shall develop all publicity material in a professional manner; and
- During the term of this Contract, the Contractor shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of the County without the prior written consent of the County Program Manager. The County shall not unreasonably withhold written consent.

8.37.2 The Contractor may, without the prior written consent of County, indicate in its proposals and sales materials that it has been awarded this Contract with the County of Los Angeles, provided that the requirements of this Sub-paragraph 8.37 shall apply.

8.38 RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT

The Contractor shall maintain accurate and complete financial records of its activities and operations relating to this Contract in accordance with generally accepted accounting principles. The Contractor shall also maintain accurate and complete employment and other records relating to its performance of this Contract. The Contractor agrees that the County, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe non-confidential and non-proprietary information, which includes time sheets, invoices, service deliverables and status reports, if applicable to evidencing Contractor performance of services for County under this Contract. All such material shall be kept and maintained by the Contractor and shall be made available to the County during the term of this Contract and for a period of five (5) years thereafter unless the County's written permission is given to dispose of any such material

prior to such time. All such material shall be maintained by the Contractor at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at the County's option, the Contractor shall pay the County for travel, per diem, and other costs incurred by the County to examine, audit, excerpt, copy, or transcribe such material at such other location.

8.38.1 Intentionally Omitted.

8.38.2 Failure on the part of the Contractor to comply with any of the provisions of this Sub-paragraph 8.38 shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract.

8.38.3 If, at any time during the term of this Contract or within five (5) years after the expiration or termination of this Contract, representatives of the County conduct an audit of the Contractor regarding the work performed under this Contract, and if such audit finds that the County's dollar liability for any such work is less than payments made by the County to the Contractor, then the difference shall be either: a) repaid by the Contractor to the County by cash payment upon demand or b) at the sole option of the County's Auditor-Controller, deducted from any amounts due to the Contractor from the County, whether under this Contract or otherwise. If such audit finds that the County's dollar liability for such work is more than the payments made by the County to the Contractor, then the difference shall be paid to the Contractor by the County by cash payment, provided that in no event shall the County's maximum obligation for this Contract exceed the funds appropriated by the County for the purpose.

8.39 RECYCLED BOND PAPER

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, the Contractor agrees to use recycled-content paper to the maximum extent possible on this Contract.

8.40 SUBCONTRACTING

The requirements of this Contract shall be provided solely by Contractor and may not be subcontracted by Contractor. Any attempt by the Contractor to subcontract may be deemed a material breach of this Contract.

8.41 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM

Failure of the Contractor to maintain compliance with the requirements set forth in Sub-paragraph 8.41 - Contractor's Warranty of Adherence to County's Child Support Compliance Program, shall constitute default under this Contract. Without limiting the rights and remedies available to the County under any other provision of this Contract, failure of the Contractor to cure such default within ninety (90) calendar days of written notice shall be grounds upon which the County may terminate this Contract pursuant to Sub-paragraph 8.43 - Termination for Default and pursue debarment of the Contractor, pursuant to County Code Chapter 2.202.

8.42 TERMINATION FOR CONVENIENCE

8.42.1 This Contract may be terminated, in whole or in part, from time to time, when such action is deemed by the County, in its sole discretion, to be in its best interest. Termination of work hereunder shall be effected by notice of termination to the Contractor specifying the extent to which performance of work is terminated and the date upon which such termination becomes effective. The date upon which such termination becomes effective shall be no less than thirty (30) days after the notice is sent.

8.42.2 After receipt of a notice of termination and except as otherwise directed by the County, the Contractor shall:

- Stop work under this Contract on the date and to the extent specified in such notice, and
- Transfer to County, to the extent not previously transferred to County, all work in progress and all other completed work. County shall pay for such completed work pursuant to a fee and invoice schedule that has been mutually agreed to by the parties, and
- Complete performance of such part of the work as shall not have been terminated by such notice.

8.42.3 All material including books, records, documents, or other evidence bearing on the costs and expenses of the Contractor under this Contract shall be maintained by the

Contractor in accordance with Subparagraph 8.38 (Record Retention and Inspection-Audit Settlement).

8.43 TERMINATION FOR DEFAULT

8.43.1 Either party may, by written notice to the other party, terminate the whole or any part of this Contract if the other party has materially breached this Contract. County may, by written notice to Contractor terminate the whole or any part of this Contract if any of the following occur:

(a) Contractor fails to perform or provide any task, subtask, deliverable, goods, Service, or other work within:

- (i) the times specified in this Contract, or in any SOS issued hereunder, including the applicable notice and/or cure periods, if any (if no cure period is specified, Contractor shall have fifteen (15) days to cure prior to termination under this Subparagraph 8.43); or
- (ii) any duly authorized extensions thereof (provided that nothing in this Subparagraph 8.43 shall in any way limit or modify any rights of County or obligations of Contractor relating to timely performance by Contractor, as otherwise set forth in this Contract);

(b) Or fails to perform or comply with any of the other provisions of this Contract, or so fails to make progress as to endanger performance of this Contract in accordance with its terms and, in either of these two circumstances, does not cure such failure within a period of fifteen (15) days (or such longer period as County may authorize in writing) after receipt of written notice from County specifying such failure; provided that Contractor shall not be entitled to any cure period, and County may terminate this Contract immediately, in the event that County determines that Contractor's failure to perform or comply is not reasonably capable of being cured or cannot be cured by Contractor in a reasonable time. If, pursuant to the preceding sentence, County has terminated this Contract without providing a cure period, and subsequently a final determination is made that the default was capable of being cured, then the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Subparagraph 8.42 (Termination for Convenience).

- 8.43.2 If, after the County has given notice of termination under the provisions of this Sub-paragraph 8.43, it is determined by the County that the Contractor was not in default under the provisions of this Sub-paragraph 8.43, or that the default was excusable under the provisions of Sub-paragraph 8.43.1, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Sub-paragraph 8.42 - Termination for Convenience.
- 8.43.3 The rights and remedies of the County provided in this Sub-paragraph 8.43 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

8.44 TERMINATION FOR IMPROPER CONSIDERATION

- 8.44.1 The County may, by written notice to the Contractor, immediately terminate the right of the Contractor to proceed under this Contract if it is found that consideration, in any form, was offered or given by the Contractor, either directly or through an intermediary, to any County officer, employee, or agent with the intent of securing this Contract or securing favorable treatment with respect to the award, amendment, or extension of this Contract or the making of any determinations with respect to the Contractor's performance pursuant to this Contract. In the event of such termination, the County shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of default by the Contractor.
- 8.44.2 The Contractor shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (800) 544-6861.
- 8.44.3 Among other items, such improper consideration may take the form of cash, discounts, services, the provision of travel or entertainment, or tangible gifts.

8.45 TERMINATION FOR INSOLVENCY

- 8.45.1 The County may terminate this Contract forthwith in the event of the occurrence of any of the following:

- Insolvency of the Contractor. The Contractor shall be deemed to be insolvent if it cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not the Contractor is insolvent within the meaning of the Federal Bankruptcy Code;
- The filing of a voluntary or involuntary petition regarding the Contractor under the Federal Bankruptcy Code;
- The appointment of a Receiver or Trustee for the Contractor; or
- The execution by the Contractor of a general assignment for the benefit of creditors.

8.45.2 The rights and remedies of the County provided in this Sub-paragraph 8.45 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

8.46 TERMINATION FOR NON-ADHERENCE OF COUNTY LOBBYIST ORDINANCE

The Contractor, and each County Lobbyist or County Lobbying firm as defined in County Code Section 2.160.010 retained by the Contractor, shall fully comply with the County's Lobbyist Ordinance, County Code Chapter 2.160. Failure on the part of the Contractor or any County Lobbyist or County Lobbying firm retained by the Contractor to fully comply with the County's Lobbyist Ordinance shall constitute a material breach of this Contract, upon which the County may in its sole discretion, immediately terminate or suspend this Contract.

8.47 TERMINATION FOR NON-APPROPRIATION OF FUNDS

Notwithstanding any other provision of this Contract, the County shall not be obligated for the Contractor's performance hereunder or by any provision of this Contract during any of the County's future Fiscal Years unless and until the County's Board of Supervisors appropriates funds for this Contract in the County's Budget for each such future Fiscal Year. In the event that funds are not appropriated for this Contract, then this Contract shall terminate as of June 30 of the last Fiscal Year for which funds were appropriated. The County shall notify the Contractor in writing of any such non-allocation of funds at the earliest possible date.

8.48 VALIDITY

If any provision of this Contract or the application thereof to any person or circumstance is held invalid, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby.

8.49 WAIVER

No waiver by the County of any breach of any provision of this Contract shall constitute a waiver of any other breach or of such provision. Failure of the County to enforce at any time, or from time to time, any provision of this Contract shall not be construed as a waiver thereof. The rights and remedies set forth in this Subparagraph 8.49 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

8.50 WARRANTY AGAINST CONTINGENT FEES

8.50.1 The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any Contract or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

8.50.2 For breach of this warranty, the County shall have the right to terminate this Contract for breach and, at its sole discretion, deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

8.51 WARRANTY OF COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM

Contractor acknowledges that County has established a goal of ensuring that all individuals and businesses that benefit financially from County through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

Unless Contractor qualifies for an exemption or exclusion, Contractor warrants and certifies that to the best of its knowledge it is now in compliance, and during the term of this contract will maintain compliance, with Los Angeles County Code Chapter 2.206.

8.52 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM

Failure of Contractor to maintain compliance with the requirements set forth in Sub-Paragraph 8.51 "Warranty of Compliance with County's Defaulted Property Tax Reduction Program" shall constitute default under this contract. Without limiting the rights and remedies available to County under any other provision of this contract, failure of Contractor to cure such default within 10 days of notice shall be grounds upon which County may terminate this contract and/or pursue debarment of Contractor, pursuant to County Code Chapter 2.206.

8.53 TIME OFF FOR VOTING

The Contractor shall notify its employees, and shall require each subcontractor to notify and provide to its employees, information regarding the time off for voting law (Elections Code Section 14000). Not less than 10 days before every statewide election, every Contractor and subcontractors shall keep posted conspicuously at the place of work, if practicable, or elsewhere where it can be seen as employees come or go to their place of work, a notice setting forth the provisions of Section 14000.

8.54 EFFECT OF TERMINATION

8.54.1 In the event County terminates this Contract in whole or in part as provided hereunder or upon the expiration of the Contract, as applicable, then, unless otherwise specified by County in writing:

1. Contractor shall continue the performance of this Contract to the extent not terminated.
2. Contractor shall cease to perform the Services being terminated on the date and to the extent specified in such notice and provide to County all completed Services and Services in progress, in a media reasonably requested by County, if applicable.
3. County will pay to Contractor all sums due and payable to Contractor for Services properly performed through the effective date of such expiration or termination (prorated as appropriate).

4. At County's option, Contractor shall provide a credit for, or return to County, all monies paid in advance by County, yet unearned by Contractor, including any prepaid fees, no later than thirty (30) days after the date of County's termination of any (or all) of the Statements of Services under this Contract and/or the Contract, whether such termination is for convenience or any default or breach hereunder.
5. Contractor shall promptly return to County any and all of the County's Confidential Information that relates to the portion of the Contract or Services terminated by County in a media reasonably requested by County.

8.54.2 Expiration or termination of this Contract for any reason will not release either party from any liabilities or obligations set forth in this Contract which (i) the parties have expressly agreed in writing will survive any such expiration or termination, or (ii) remain to be performed or by their nature would be intended to be applicable following any such expiration or termination.

8.55 GRATUITOUS EFFORTS

If Contractor provides any task, deliverable, Service, or other work to County that utilizes other than approved Contractor personnel, and/or that goes beyond the applicable SOS expiration date, and/or that exceeds the total sum as specified in an SOS, as originally written or modified, in accordance with Sub-paragraph 8.1 ("AMENDMENTS"), or is other than as specified in an approved SOS, these shall be gratuitous efforts on the part of Contractor for which Contractor shall have no claim whatsoever against County.

8.56 PRO BONO SERVICES

Contractor may, from time to time, provide Pro Bono Services for County through this Contract and an accompanying No-Cost Statement of Services which does not create a legal obligation for County to pay Contractor for such Services. It is Contractor's intent, under this Contract and accompanying No-Cost Statement of Services, to be in compliance with applicable laws and regulations. It is specifically understood that all Pro Bono Services provided under this Contract and accompanying No-Cost Statement of Services are for the sole benefit and use of County.

8.57 FEDERAL ACCESS TO RECORDS

If, and to the extent that Section 1861(v)(l)(i) of the Social Security Act (42 United States Code Section 1395(v)(l)(i)) is applicable, Contractor agrees that for a period of five (5) years following the furnishing of Services under this Contract, Contractor shall maintain and make available, upon written request, to the Secretary of the United States Department of Health and Human Services or the Comptroller General of the United States or to any of their authorized representatives, the time sheets, status reports, invoices, Services, and deliverables of Contractor which are required to verify the nature and extent of the costs of Services related to this Contract. Furthermore, if Contractor carries out any of the Services provided hereunder through any subcontract with a value or cost of ten thousand dollars (\$10,000) or more over a twelve (12) month period with a related organization (as that term is defined under federal law), Contractor will request that each subcontract shall provide for such access to the time sheets, status reports, and invoices of the subcontractor.

8.58 SEVERABILITY

If any provision of this Contract is adjudged void or invalid for any reason whatsoever, but would be valid if part of the wording thereof were deleted or changed, then such provision shall apply with such modifications as may be necessary to make it valid and effective. In the event that one or more of the provisions of this Contract is found to be invalid, illegal or unenforceable in any respect, such provision shall be deemed deleted here from and the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

8.59 NO MINIMUM REQUIREMENT

Contractor acknowledges and agrees that the County is not required to issue a minimum number of SOSs, or any at all, under this Contract, and that Contractor has received good and sufficient legal consideration by the establishment of a Contract which may more readily facilitate Contractor Services to County.

8.60 THIRD PARTY BENEFICIARY

Notwithstanding any other provision of this Contract, the Contractor and County do not in any way intend that any person or entity shall acquire any rights as a third party beneficiary of this Contract, except that this provision shall not be construed to diminish the Contractor's indemnification obligations hereunder.

8.61 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 ("HIPAA")

- 8.61.1 Contractor expressly acknowledges and agrees that the provision of services under this Contract does not require or permit access by Contractor or any of its officers, employees, or agents, to any patient medical records/patient information. Accordingly, Contractor shall instruct its officers, employees, and agents that they are not to pursue, or gain access to, patient medical records/patient information for any reason whatsoever.
- 8.61.2 Notwithstanding the forgoing, the parties acknowledge that in the course of the provision of services hereunder, Contractor or its officers, employees, and agents, may have inadvertent access to patient medical records/patient information. Contractor understands and agrees that neither it nor its officers, employees, or agents, are to take advantage of such access for any purpose whatsoever.
- 8.61.3 Additionally, in the event of such inadvertent access, Contractor and its officers, employees, and agents, shall maintain the confidentiality of any information obtained and shall notify Director that such access has been gained immediately, or upon the first reasonable opportunity to do so. In the event of a breach by Contractor of any of its obligations set forth in this Sub-paragraph 8.61 that results in the unauthorized disclosure of patient medical records/patient information, Contractor agrees to pay direct costs incurred by County, to the extent such breach was caused by Contractor. For purposes of this Subparagraph 8.61 only, the following shall be considered direct costs: (i) costs arising from required notification of individuals whose patient medical records/patient information is subject to the breach, and (ii) costs associated with procuring one (1) year of credit monitoring protection for individuals who are put at risk of identity theft as a result of the breach, up to a limit of \$1 million per occurrence and \$2 million in the aggregate. Solely with respect to any breach of this

Subparagraph 8.61, in no event will either party be responsible for any consequential or indirect damages of any nature. Contractor agrees to provide appropriate training to its employees regarding their obligations as described hereinabove.

[Intentionally Blank]

IN WITNESS WHEREOF, Contractor has executed this Contract, or caused it to be duly executed and the County of Los Angeles, by order of its Board of Supervisors has caused this Contract to be executed on its behalf by the Chair of said Board and attested by the Executive Officer-Clerk of the Board of Supervisors thereof, the day and year first above written.

CONTRACTOR: MICROSOFT CORPORATION

By _____
David T. Gallagher, Director of Contracts

COUNTY OF LOS ANGELES

By _____
Richard Sanchez, Chief Information Officer

ATTEST:

PATRICK OGAWA
Acting Executive Officer-Clerk
of the Board of Supervisors

By _____

APPROVED AS TO FORM:

MARY C. WICKHAM
Interim County Counsel

By _____
Deputy County Counsel